TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 734

THE UNITED STATES OF AMERICA

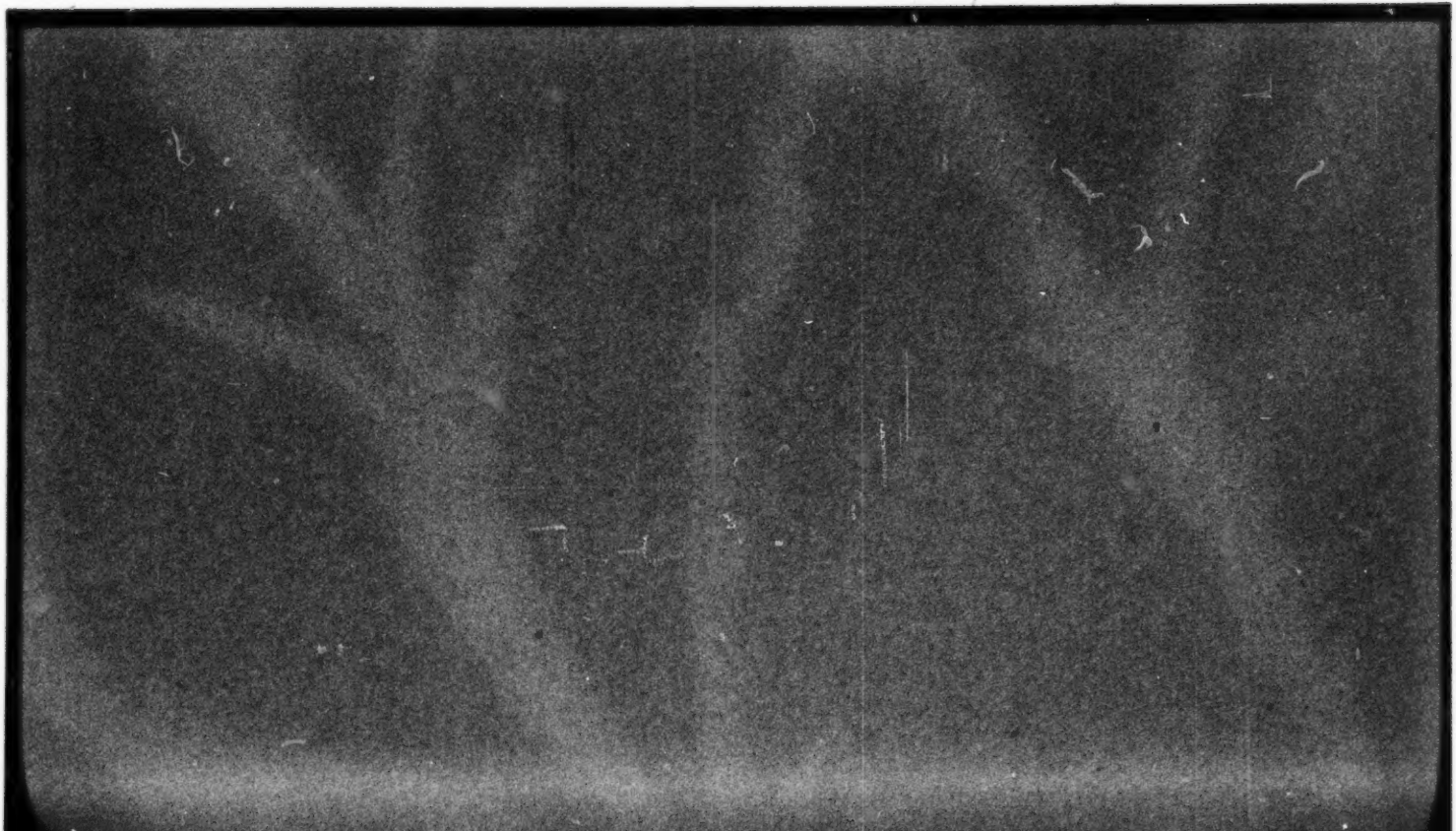
vs.

GLEN MURRAY

ON CERTIORARI FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

FILED OCTOBER 24, 1927

(33846)



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 394

THE UNITED STATES OF AMERICA
vs.
GLEN MURRAY

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

INDEX

	Original	Print
Order to send up entire record and cause	A	iii
Proceedings in U. S. C. C. A., Eighth Circuit	B	iii
Caption [omitted in printing]	B	iii
Record from D. C. U. S., District of Nebraska	1	1
Information	1	1
Arraignment and plea of not guilty	4	4
Entry of plea of guilty	5	5
Judgment and sentence	5	5
Commitment and marshal's return	6	6
Order granting parole	7	7
Assignments of error	8	8
Petition for writ of error	8	8
Order allowing writ of error	9	9
Writ of error and clerk's return	9	9
Citation and service	11	11
Praecipe for transcript of record	12	12
Clerk's certificate	13	13
Appearance of counsel	14	15
Submission	14	15
Order to file and enter certificate of question to Supreme Court	15	15
Certificate of question to Supreme Court [omitted in printing]	15	15
Clerk's certificate [omitted in printing]	18	15

A

Supreme Court of the United States

Order to send up entire record and cause

October 27, 1927

It is now here ordered by this court, in accordance with section 239 of the Judicial Code, as amended by the act of February 13, 1925 (43 Stat. 936), that the entire record in this cause be certified to this court so that the whole matter in controversy may be considered by this court; and the cause is hereby assigned for argument on Monday, November 21st next, after the cases heretofore assigned for that day, to be heard with case No. 539, Frederick A. Cook, petitioner, vs. The United States of America, should the court grant the petition for a writ of certiorari now pending in the latter case.

B [Caption omitted.]

United States District Court,
District of Nebraska,
Omaha Division.

United States of America vs. Glen Murray	Case No. 4601 Criminal

Be It Remembered, That on the dates hereinafter shown, certain papers were filed and record made and entered in the above entitled matter, which is in the words and figures following, to-wit:

1

Information.

In the District Court of the United States, District of Nebraska, Omaha Division.

United States of America, Plaintiff, vs. Glen Murray and R. H. Schaefer, first, real and true name unknown, Defendants.	Number 4601 Criminal.

James C. Kinsler, United States Attorney, by Andrew C. Scott, Assistant United States Attorney for the District of Nebraska, who for the United States in this behalf prosecutes, comes into court in his own proper person and gives the court to understand and be informed, that said Glen Murray and R. H. Schaefer, first, real and true name unknown, heretofore, to wit, on or about the 17th day of July, 1926, in the Soft Drink Bar and Lunch Room located at 4942 South 26th street, in the city of Omaha, county of Douglas, in the Omaha Division of the District of Nebraska, then and there being, did then and there unlawfully, wilfully and knowingly sell to Charles Campbell, certain intoxicating liquor, to-wit, 3 drinks of alcohol, fit for beverage purposes, without first obtaining a permit from the Commissioner of Internal Revenue so to do; contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

Second Count.

And the said United States Attorney, who prosecutes for the United States as aforesaid, further gives the Court to

understand and be informed, that said Glen Murray and R. H. Schaefer, first, real and true name unknown, heretofore, to wit, on or about the 20th day of July, 1926, in the Soft Drink Bar and Lunch Room located at 4942 South 26th street, in the City of Omaha, County of Douglas, in the Omaha Division of the District of Nebraska, then and there being, did then and there unlawfully, willfully, and knowingly sell to M. A. Wright, certain intoxicating liquor, to wit, 4 drinks of moonshine whiskey, containing more than one-half of one per cent of alcohol by volume, and fit for beverage purposes, without first obtaining a permit from the Commissioner of Internal Revenue so to do; contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

2

Third Count

And the said United States Attorney, who prosecutes for the United States as aforesaid, further gives the Court to understand and be informed, that said Glen Murray and R. H. Schaefer, first, real and true name unknown, heretofore, to wit, on or about the 20th day of July, 1926, in the Soft Drink Bar and Lunch Room located at 4942 South 26th street, in the City of Omaha, County of Douglas, in the Omaha Division of the District of Nebraska, then and there being, did then and there unlawfully, willfully and knowingly sell to Charles Campbell certain intoxicating liquor, to wit, 4 drinks of moonshine whiskey, containing more than one-half of one per cent of alcohol by volume, and fit for beverage purposes, without first obtaining a permit from the Commissioner of Internal Revenue so to do; contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

Fourth Count.

And the said United States Attorney, who prosecutes for the United States as aforesaid, further gives the Court to understand and be informed, that said Glen Murray and R. H. Schaefer, first, real and true name unknown, heretofore, to wit, on or about the 20th day of July, 1926, in the Soft Drink Bar and Lunch Room located at 4942 South 26th street, in the City of Omaha, County of Douglas, in the Omaha Division of the District of Nebraska, then and there being, did then and there unlawfully, willfully, and knowingly sell to Newton Splawn, certain intoxi-

3

cating liquor, to wit, 4 drinks of moonshine whiskey, containing more than one-half of one per cent of alcohol by volume, and fit for beverage purposes, without first obtaining a permit from the Commissioner of Internal Revenue so to do; contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

Fifth Count

And the said United States Attorney, who prosecutes for the United States as aforesaid, further gives the Court to understand and be informed, that said Glen Murray and R. H. Schaefer, first, real and true name unknown, heretofore, to wit, on or about the 20th day of July, 1926, in the Soft Drink Bar and Lunch Room located at 4942 South 26th street, in the City of Omaha, County of Douglas, in the Omaha Division of the District of Nebraska, then and there being, did then and there unlawfully, willfully, and knowingly sell to Charles Campbell, certain intoxicating liquor, to wit, 12 drinks of alcohol, fit for beverage purposes, without first obtaining a permit from the Commissioner of Internal Revenue so to do; contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

Sixth Count.

And the said United States Attorney, who prosecutes for the United States as aforesaid, further gives the Court to understand and be informed, that said Glen Murray and
4 R. H. Schaefer, first, real and true name unknown, heretofore, to wit, on or about the 20th day of July, 1926, in the city of Omaha, county of Douglas, in the Omaha Division of the District of Nebraska, then and there being, did then and there unlawfully, willfully, and knowingly maintain a common nuisance, that is to say, the said Glen Murray and R. H. Schaefer, first, real and true name unknown, did unlawfully possess, control, manage, operate, and maintain a place, which was used as a Soft Drink Bar and Lunch Room, located at 4942 South 26th street, in the city of Omaha, county of Douglas, in the Omaha Division of the District of Nebraska, where there was kept for sale and bartered and sold intoxicating liquor containing more than one-half of one per cent of alcohol by volume, and which was fit for beverage purposes, without first obtaining a permit from the Commissioner of Internal Revenue so to do; con-

trary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

JAMES C. KINSLER
United States Attorney,
By ANDREW C. SCOTT
Assistant United States Attorney

United States of America,
District of Nebraska,
Omaha Division. } ss.

Andrew C. Scott, Assistant United States Attorney for the District of Nebraska, being first duly sworn, on his oath, says that the facts stated in the foregoing Information are true, as he verily believes.

ANDREW C. SCOTT
Assistant United States Attorney

Subscribed and sworn to before me this 9th day of September, A. D. 1926.

R. C. HOYT
(Seal) Clerk of the United States District Court,
District of Nebraska

By JOHN NICHOLSON, Deputy

5 Endorsed: No. 4601 United States District Court, District of Nebraska, Omaha Division. The United States vs. Glen Murray and R. H. Schaefer, first, real and true name unknown. Information Violation National Prohibition Act; Sales of Intoxicating Liquor and Maintaining a Common Nuisance. Filed Sep 9 1926 R. C. Hoyt, Clerk.

---

6 (Arraignment and Plea of Not Guilty.)

September Term, 1926. October 20, 1926.

Before Judge Woodrough.

The defendants, Glen Murray and R. H. Schaefer, first, real and true name unknown, appear at the bar of the Court, personally, and are duly arraigned upon the information presented and filed herein against them, charging violations of the National Prohibition Act, as charged therein.

Thereupon, said defendants enter pleas of "Not Guilty" to the offenses as charged in said information.

---

7 (Entry of Plea of Guilty.)

September Term, 1926. October 22, 1926.

Before Judge Woodrough.

The above named defendants having been heretofore duly arraigned upon the information filed herein against them, and having entered pleas of "Not Guilty", come now and withdraw said pleas, and each enter pleas of "Guilty" to the offenses as charged in said information. (5 sales and 1 nuisance.)

It Is Ordered, by the Court, that this cause be, and the same is hereby continued for sentence as to each defendant, to October 25, 1926.

---

8 (Judgment and Sentence, October 25, 1926.)

Thereupon Afterwards, to-wit. On the 25th day of October, 1926, being one of the days of the September 1926 term of said Court held in the City of Omaha before Hon. J. W. Woodrough, one of the Judges of said Court, the following among other proceedings were had in the words and figures following, to-wit:

United States of America, vs. Glen Murray and R. H. Schaefer, first name unknown.	No. 4601 Criminal,

The above named defendants having heretofore entered pleas of guilty to the offenses as charged in the information filed herein, and said cause having been continued for sentence to this date; Now comes the United States Attorney and moves the Court that sentence and judgment be pronounced against each of said defendants, upon the pleas as entered herein. And said defendants being asked whether they have any legal reason why sentence and judgment should not be pronounced against them, and being heard in that behalf and no cause being shown, it is by the Court,

Considered, Ordered and Adjudged, That the defendant, Glen Murray, be imprisoned in the Jail of Douglas County, at Omaha, Nebraska, for a term of Three (3) months, on each count of the information to run concurrently, from October 25, 1926. And it is

Considered, Ordered and Adjudged, That the defendant, R. H. Schaefer, first name unknown, be imprisoned in the

jail of Douglas County, at Omaha, Nebraska, for a term of Three (3) months, on each count of the information to run concurrently, from October 25, 1926.

9

Final Commitment

(Original) 4601 Criminal
United States of America
District of Nebraska
Omaha Division

The President of the United States of America

To the Marshal of the United States for the District of Nebraska, and to the Keeper of the Common Jail of Douglas County, Nebraska,

Greetings:

Whereas, on the 22nd day of October, 1926, at a term of the District Court of the United States, for the District of Nebraska, held at Omaha in said District, Glen Murray, was convicted of [a] the crime of violation of the National Prohibition Act, and among other things, sentenced to be imprisoned in the said Common Jail of Douglas County, Nebraska, situated at Omaha, for the period of three (3) months as to each count of the information to run concurrently. Sentence to commence October 25, 1926.

Now, Therefore, You, the Said Marshal, are hereby commanded to deliver to the said Keeper of the said Common Jail of Douglas County, Nebraska, the body of Glen Murray, who is now in your custody.

And you, the said Keeper of said Common Jail of Douglas County, Nebraska, are hereby commanded to receive the body of the said Glen Murray and safely keep him in said Jail until said sentence of imprisonment shall have been fully complied with, or until he shall have been discharged therefrom by due course of law.

Witness, the Honorable the Judges of the District Court of the United States for the District of Nebraska, at Omaha this 25th day of October, 1926.

(Seal) R. C. HOYT, Clerk

By F. A. MOORE, Deputy

---

10 Return

Received this Commitment on the 25 day of Oct 1926 and on same day, I delivered the within-named Glen Murray to the custody of the within-named Jail Keeper with whom I left at the same time a certified copy of this Commitment.

Dated this 25 day of Oct 1926

D. H. CRONIN
U. S. Marshal

By J. A. DAVIS
Deputy

Endorsed: Filed in U. S. District Court on Nov. 4, 1926.

---

11 (Order granting Parole.)

Thereupon Afterwards, to-wit. On the 26th day of October, 1926, being one of the days of the September 1926 term of said Court held in the City of Omaha, before Honorable J. W. Woodrough, one of the judges of said Court, the following among other proceedings were had in the words and figures following, to-wit:

United States of America,
vs.
Glen Murray,
} No. 4601 Criminal, Parole

The defendant, Glen Murray, having been heretofore duly arraigned, and having entered pleas of guilty to the offenses as charged in the information filed herein, charging violation of the National Prohibition Act. (5 sales, 1 nuisance)

And the Court having imposed a sentence of Three (3) months in the Douglas County Jail, at Omaha, Nebraska, on each count, to run concurrently, from October 25, 1926.

It appearing that the ends of justice, together with the welfare of the defendant and the public, could be served by suspending further execution of the foregoing sentence. And the Court having cautioned and admonished the defendant, it is by the Court,

Ordered and Adjudged, That said defendant, Glen Murray, be placed on probation for the period of two (2) years, under the personal supervision of Robert P. Samardick, who is hereby appointed and constituted probation officer in this case.

---

12 Assignment of Errors

Comes now the United States of America, plaintiff, and by its District Attorney for Nebraska files the following Assignment of Errors in the above entitled cause:

Assignment No. One.

The court erred in entering its order of October 26, 1926, releasing Defendant Glen Murray from the custody of the jailer and placing said defendant on probation for the reason that said defendant had, on October 25, 1926, entered upon the execution of a sentence of three months on each of five counts to run concurrently (imposed by this court for violation of the National Prohibition Act).

Assignment No. Two.

The court erred in placing Defendant Glen Murray on probation after execution of his sentence had begun at an ex parte proceeding of which the United States of America had no notice, and was, therefore, not present to present its case or except to the rulings of the court.

THE UNITED STATES OF AMERICA,
Plaintiff in Error

by JAMES C. KINSLER,
United States Attorney,
and
ANDREW C. SCOTT
Assistant United States Attorney

Endorsed: Filed Jan 25 1927 R. C. Hoyt, Clerk.

---

13 Petition for Writ of Error

To the Honorable George C. Scott, Judge of the District Court of the United States for the District of Nebraska, Omaha Division:

The plaintiff, The United States of America, conceiving itself aggrieved and prejudiced in certain orders and rulings of the court in said cause, and alleging divers grievous and prejudicial errors of the court in the making of said orders and rulings and final judgments herein, has filed herein an Assignment of Errors complained of, and prays for an allowance of a Writ of Error in said cause to the United States Circuit Court of Appeals for the Eighth Circuit and that a

Transcript of the Record and proceedings, duly authenticated, may be sent to said Court of Appeals.

THE UNITED STATES OF AMERICA, Plaintiff,

By JAMES C. KINSLER, United States Attorney.
and
ANDREW C. SCOTT
Assistant United States Attorney

Endorsed: Filed Jan 26 1927 R. C. Hoyt, Clerk.

---

14 Order Allowing Writ of Error

Upon the hearing of the Petition for a Writ of Error by the plaintiff in error, The United States of America, and it appearing that an Assignment of Errors has been duly made and filed as requested by law, it is:

Ordered, that the Writ of Error be, and the same is allowed to the end that the judgment of the court heretofore entered herein may be reviewed in the United States Circuit Court of Appeals for the Eighth Circuit.

By THE COURT,

GEO. C. SCOTT
Judge of the District Court of the United States, District of Nebraska, Omaha Division.

Endorsed: Filed Jan 25 1927 R. C. Hoyt, Clerk.

---

15 (Writ of Error and Clerk's Return.)

United States of America, ss:

The President of the United States,

To the Honorable Judge of the District Court of the United States for the District of Nebraska, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, at the September Term, 1926, thereof, between The United States of America, and Glen Murray, a manifest error has happened, to the great damage of the said The United States of America, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the

parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid, at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, on or before the 26th day of March, 1927, to the end that the record and proceedings aforesaid be inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, this 25th day of January, 1927.

Issued at my office in the City of Omaha, Nebraska, with the seal of the District Court of the United States for the District of Nebraska, dated as aforesaid.

(United States District Court Seal
District of Nebraska
Omaha Division)

R. C. HOYT
Clerk, U. S. District Court,
District of Nebraska.
By JOHN NICHOLSON
deputy

Allowed by

GEO. C. SCOTT,
Judge.

Return to Writ

United States of America,
District of Nebraska,
Omaha Division. } ss:

In obedience to the command of the within writ, I herewith transmit to the United States Circuit Court of Appeals for the Eighth Circuit of the United States a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In Witness Whereof, I hereto subscribe my name and

affix the seal of said District Court, at my office in the City of Omaha, this 27th day of January, A. D. 1927

(United States District Court Seal District of Nebraska Omaha Division)

R. C. HOYT
Clerk of said Court.
JOHN NICHOLSON
deputy

Endorsed: Filed in U. S. District Court on Jan. 25, 1927.

16

Citation

United States District Court, District of Nebraska, Omaha Division

The United States of America,
Plaintiff,
vs.
Glen Murray, et al,
Defendants.

Number 4601 Criminal

To Glen Murray, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a Writ of Error, filed in the Clerk's office of the District Court of the United States for the District of Nebraska, Omaha division, wherein the United States of America is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said Writ of Error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Judges of the District Court of the United States for the District of Nebraska, Omaha division, this 25th day of January, 1927.

GEO C. SCOTT
United States District Judge, District of Nebraska, Omaha division

Service of this citation accepted by Glen Murray, Defendant in Error, this 25th day of January, 1927.

GLEN MURRAY
Defendant in Error

Filed Jan. 25, 1927, R. C. Hoyt, Clerk.

---

17 Praecipe for Transcript

To the Clerk of Said Court:

Please prepare Transcript of Record in the above cause for the United States Circuit Court of Appeals for the Eighth Circuit, same to consist of the following:

Information filed September 9, 1926.

Plea of guilty entered on October 22, 1926.

Order and judgment of the court entered on October 25, 1926.

Final Commitment

Return of the Marshal thereto

Order of the Court made and entered [Octover] 26, 1926, releasing the defendant from custody and placing him on probation.

Evidence, if any, before the Court at the time order was entered releasing said defendant from custody and placing him on probation.

Petition for Writ of Error.

Assignment of Errors

Order allowing Writ of Error

Writ of Error

Citation

Praecipe

Transcript of Clerk's certificate to Transcript.

THE UNITED STATES OF AMERICA,
Plaintiff in Error,
By JAMES C. KINSLER,
United States Attorney,
and
ANDREW C. SCOTT
Assistant United States Attorney

Service accepted by Glen Murray, Defendant in Error, this 25th day of January, 1927

GLEN MURRAY
Defendant in Error

Endorsed: Filed Jan 25 1927 R. C. Hoyt Clerk.

---

18 Clerk's Certificate

In the United States District Court,
District of Nebraska,
Omaha Division.

United States of America, }
District of Nebraska. } ss

I, R. C. Hoyt, Clerk of the District Court of the United States Within and for the District of Nebraska, hereby certify that pursuant to the foregoing writ of error and in obedience thereto, and in compliance with the Praecipe, a copy of which is found on page..... hereof, the foregoing record has been made, and that the same is a true and faithful transcript of the pleadings and proceedings on file and of record in said court, as mentioned in said praecipe and as indicated in the foregoing index, in the case of No. 4601 Law, The United States of America vs. Glen Murray, and that copies of the writ of error and citation, duly certified, have been lodged and remain in my office as such clerk.

Witness My Hand and the Seal of said Court at Omaha in said District this 31st day of January A. D. 1927.

R. C. HOYT
Clerk

(United States District
Court Seal
District of Nebraska
Omaha Division)

Filed Feb 1 1927 E. E. Koch Clerk

---

14 United States Circuit Court of Appeals, Eighth Circuit

No. 7736

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR

vs.

GLEN MURRAY

Appearance of counsel

Filed Feb. 4, 1927

The clerk will enter my appearance as counsel for the plaintiff in error.

JAMES C. KINSLER,
U. S. Attorney,
AMBROSE C. EPPERSON,
WILLIAM J. FROELICH,
GEORGE A. KEYSER,
Assistant U. S. Attys.

[File indorsement omitted.]

In United States Circuit Court of Appeals

Submission

May 26, 1927

This cause having been called for hearing in its regular order and counsel not appearing for either of the parties to make oral argument and no brief having been filed for the defendant in error in this court, this cause is by the court taken as submitted on the transcript of the record from said District Court and the brief of counsel for plaintiff in error filed herein.

15 In United States Circuit Court of Appeals

Order to file and enter certificate of question to Supreme Court

July 12, 1927

A certain question having arisen on the record in this cause, upon which this court desires the instruction of the Supreme Court of the United States as provided by law, and a certificate of such question having been prepared and duly signed, it is now here ordered by this court that such certificate be filed and entered of record in this court and that the original thereof be duly certified by the clerk

of this court and that it be by him duly transmitted to the Supreme Court of the United States for its action thereon.

[Cerificate of question to the Supreme Court of the United States; omitted in printing; printed under separate cover.]

18 [Clerk's certificate to foregoing transcript omitted in printing.]

○